In the High Court of Punjab and Haryana at Chandigarh

ITA No. 97 of 2007
Date of decision: 25-7-2007

The Commissioner of Income Tax, Karnal

---Appellant

Vs.

M/s Hand Fab Home, Panipat

---Respondent

Coram: **HON'BLE MR. JUSTICE M.M.KUMAR**
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

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Present: Mr.Yogesh Putney Advocate,
for the appellantrevenue

None for the respondent-assessee
despite service.

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M.M.KUMAR J.

Order

This order shall dispose of ITA Nos. 97, 99, 100, 102, 103 and 174 of 2007 because a common question of law has been raised. The Tribunal in all these cases vide various orders has placed reliance on the provision of Section 80-IB of the Act which employees different language than the language of Section 80-I of the Act. List of all these appeals alongwith related number of the appeal before the Tribunal is as under:-

	Tribunal
ITA No. 97/2007	ITA No. (Del) 2006 Asstt. Year 2002-2003 Dated 16.6.2006
ITA No. 99/2007	ITA No. 1043 (Del) 2006 Asstt. Year 2003-2004 8.6.2006

ITA No. 100/2007	ITA No. 1038 (Del) 2006 Asstt. Year 2001-2002 8.6.2006
ITA No. 101/2007	ITA No. 1022 (Del) 2006 Asstt. Year 2001-2002 22.8.2006
ITA No.102/2007	ITA No. 1223 (Del) 2006 Asstt. Year 2002-2003 8.6.2006
ITA No. 103/2007	ITA No.817 (Del) 2006 Asstt. Year 2002-2003 16.6.2006
ITA No.174/2007	ITA No. 1033 (Del) 2006 Asstt. Year 2003-2004 23.8.2006

The revenue has claimed that the following substantial questions of law would emerge which are as under:-

> "1. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in confirming the order of the CIT (Appeals) directing the AO to allow deduction u/s 801B on the amount of duty draw back received by the assessee which cannot be termed as income " derived from" an industrial undertaking as held by the Hon'ble Suprme Court of India in the case CIT Vs. Sterling Foods (1999) 237 ITR 579 (SC)? " 2. Whether on the fact and in the circumstances of the case the Ld. ITAT is right in law in allowing deduction u/s 801 B of the Income Tax Act, 1961 on the total business profits which

includes duty draw back/export incentives without considering the provisions of section 80IB under which the deduction is allowable only from the income derived from the industrial undertaking having direct nexus with the activity of industrial undertaking?"

The matter is not res integra and has been duly considered by a Division Bench judgment of this in the case of **M/s Liberty India Vs. Commissioner of Income Tax, Karnal (ITA No. 590 of 2005 decided on 22.9.2006).** While placing reliance on a judgment of Hon'ble the Supreme Court in the case **CIT Vs. Sterling Foods** (1999) 237 ITR 579 (SC) the Division Bench has held that the Income earned by the assessee from duty draw back cannot be held to be the income 'derived from' specified business within the meaning of Section 80IB (1).

Learned counsel for the assessee has urged that the question needs to be reconsidered because a contrary view has been taken by a division Bench of this Court in the case of **M/s Phatela Cotgin Industries (P) Ltd. Vs. Commissioner of Income-Tax** (ITA No. 432 of 2005 decided on 31.5.2007).

However, we find, after perusing the order passed by a Division Bench of this Court, that the facts of that case were entirely different. We are also of the view that once Hon'ble the Supreme Court in **Sterling Foods' case (**supra) has rendered the judgment then the question cannot be reopened. The appeals filed by the revenue are liable to be accepted and the question raised deserves to be answered in favour of the revenue.

In view the above, the appeals are allowed and the question raised is answered in favour of the revenue.

(**M.M.KUMAR**)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 25, 2007
paramjit